non-attorney, obviously prepared the paperwork, and she works out of MIDDLE DISTRICT OF ***GEORGIA***.

Arnold can find no assignment or delegation of SCHLESINGER to MIDDLE DISTRICT OF ***GEORGIA***, but only to MIDDLE DISTRICT OF ***FLORIDA***. <http://air.fjc.gov/public/home.nsf/hisc>.

Arnold's arrest, transfer; Bond

Based upon the MIDDLE DISTRICT OF ***GEORGIA*** "order," Arnold was arrested and "arraigned" in Georgia, transferred (in custody) to Florida, and released on Bond out of the MIDDLE DISTRICT OF ***FLORIDA***.

Arnold's Motion to Strike and SCHLESINGER's retaliatory criminal Record-tampering

Noting the obvious problem with the Georgia "order," etc., and charging a host of other things, including UPL and barratry, Arnold filed his Motion to Strike the motion to revoke. He served his motion early in November. Boy was he surprised to find that it was not "of Record" when he showed up for the 30 November revocation hearing!

During the hearing, Arnold questioned GRIZZARD's authority to file motions. While UPL is certainly raised *in* Arnold's motion, he hadn't even remotely mentioned *the motion*, as such, and yet this is when SCHLESINGER, out of the blue, said, "Your Motion to Strike is denied."

Per the *Docket Sheet*, Arnold's motion wasn't "filed" until 16 December, or *two weeks after* the hearing. So, if that accurately reflected the timing, how it is, exactly, that SCHLESINGER even knew that Arnold *had* a Motion to Strike, much less enough about it to overrule it, *by name*, much less *at that particular instant?!*

SCHLESINGER obviously received not only Arnold's Motion to Strike, but also the Subpoena Duces Tecum sent to SCHLESINGER (GRIZZARD and FAIRCLOTH, the Georgia magistrate, also received Subpoenas), well ahead of the 30 November hearing. SCHLESINGER had to have felt caught red-handed arresting Arnold illegally.

and so, rather than just stopping there, taking the "out" Arnold was offering, SCHLESINGER B.S.'d and bullied his way through, putting himself above the law, with Arnold as the victim, *again*, this time ***very*** intentionally. SCHLESINGER had to have the conspiratorial assistance of the Clerk, because Arnold sen only one motion to the court, and that motion wasn't "filed" until 16 December, or close to six weeks after Arnold had served it, and two weeks after the revocation hearing.

Then, to cap off this retaliatory criminal episode, SCHLESINGER tried to pretend that his *first* ruling on Arnold's motion was in January, 2005. On 3 January 2005, *see* [1426], SCHLESINGER writes in his "order," "Those proceedings are already concluded."

So, how is it, exactly, that Arnold's Motion, allegedly never seen by the Clerk, much less by SCHLESINGER, until 16 December, and then denied three weeks later, because, in part, "Those proceedings are already concluded," was denied, exactly by its name, on 30 November, in the big fat middle of the revocation proceeding, out of the clear blue, solely at the trigger of the mere mention of UPL in the context of Arnold's statement that he questions whether GRIZZARD can even file a motion to revoke?!

Obviously, both SCHLESINGER and the Clerk conspired, under color, to retaliate against Arnold by criminal Record-tampering and criminal witness-tampering. Given the Bond revocation, we add extortion.

The appellate court went very silent on these points, refused to release Arnold pending appeal and turned a blind eye to the manifest problems, obviously intending to help it simply "go away." They're busy, but their "order" is short and has no supporting authority. How long can it possibly take to draft an "off the top of the head" ruling?!

Arnold's additional jail time

Arnold spent 12 more months in jail over this.

Argument

Remedies Requested

Reverse and Remand with Instructions.

Reverse the "judgment," or vacate and remand, as before, or reverse and remand to the *trial* court with instructions on (1) recusal, (2) granting Arnold's Motion to Strike and (3) setting up a Board of Inquiry.

Summary

Arrest for mere alleged "breach" is bad enough, but arrest for fully justified, non-criminal conduct, ***without evidence***, via *ex parte* process, i.e., without Notice or Opportunity to be heard, by a "judge" who animated a District to which he was never assigned, who, when exposed on that problem, retaliated via criminal Record- and witness-tampering, and who is then "covered" by the appellate "court," is so unconscionable, so egregious, so shocking, as to call for a full criminal investigation.

The "case or controversy" element is more than satisfied. "Capability of repetition" not only exists, but also will be ***encouraged*** if not corrected.

By releasing Arnold to the community, either BOP erred or they didn't. If they didn't, there was never basis for revocation. Since that original judgment was vacated several months *after* revocation, *see Arnold*, BOP's position was ***100% justified***—at the time of Arnold's release, the "judgment" was facially illegal. If BOP did err, nothing about arresting Arnold ever fixed BOP's release Notice. Where Arnold gets mixed instructions, that's not his problem. He has to be able to rely upon BOP's analysis, flawed or not, *especially* where he's released in his proper capacity. Either way, if error is alleged, fix that *first*. If Plaintiff is "damaged" by BOP's release position, then let *them* fix that problem, *first*, and *then* have BOP give Arnold NOTICE of that amended/ corrected paperwork, so as to start again from the top.

Subject Matter Jurisdiction—Case or Controversy

1. Since Arnold has been completely released, is there still a case or controversy?

Capable of repetition, yet evading review.

If completion of sentence moots out this case, then the problems extant here are "capable of repetition, yet evad[e] review." *Roe v. Wade*.

Collateral consequences.

Also, there are "collateral consequences" of the revocation order, *see, e.g., Spencer v. Kemna*, including (1) the assertion of jurisdiction in/by the trial court that didn't exist, (2) arrest for alleged "breach," i.e., in a *civil* context, based on alleged non-criminal conduct, ***without evidence*** and *ex parte*, i.e., without Notice and without Opportunity to be heard *before* liberty was deprived, (3) the trial "judge's" retaliatory criminal Record-tampering, and (4) sufficient time needed/taken in the appellate process that would otherwise moot out this entire review.

Conclusion—this matter is not moot.

This case or controversy definitely persists.

Subject Matter Jurisdiction—Geography

2. May a federal trial judge assigned to one District animate a different District for any purpose?

(May SCHLESINGER, assigned to M.D. Fla., animate M.D. Ga. to order Arnold's arrest?)

(Does SCHLESINGER, assigned to M.D. Fla., have M.D. Ga. signature authority?)

If this must be SCHLESINGER's motion.

What's the point of geographic assignment, at all? *See* 28 U.S.C. §§ 295, 296. *But cf.* [1386]. Given this manifest limitation, since Arnold committed no crime, based on what possible lawful "order" was Arnold arrested?

If this cannot be SCHLESINGER's motion.

Where SCHLESINGER has no such signature authority, as a matter of law, then the motion to revoke simply isn't his. Therefore, this is GRIZZARD's motion. This triggers UPL, barratry and several additional criminal and civil conspiracy matters raised below.

On the one hand, if the "admissions" policy is such that law enforcement officers *may* file motions, e.g., for search warrants, then it's consistent with such policy to allow probation officers to file motions, e.g., for revocation. But, if revocation motions are masked via the concept of *sua sponte*, how are "original proceedings," e.g., motions for search warrants, arrest warrants, etc., masked? Where probation officers are covered by case-*maintenance sua sponte*, where do the "other" law enforcement officials fit, since there is no case-*initiation sua sponte?* Two answers arise: (1) the admissions policy (potentially) violates Equal Protection (non-attorney federal agents admitted, other non-attorneys not); (2) UPL, generally.

The obvious solution.

This whole UPL issue vanishes where *attorneys* file the motions. *United States v. Jones*, 957 F. Supp. 1088 (E.D. Ark. 1997) (Hon. G. Thomas Eisele).

§ 455(a) Recusal, Liljeberg

3. Where SCHLESINGER is a conspirator in the retaliatory criminal Record-tampering, should he have self-recused?

Shall—It's not as if there's a substantive choice.

§ 455 Disqualification of justice, judge or magistrate judge

(a) Any justice, judge or magistrate judge of the United States ***shall*** disqualify himself in any

proceeding in which his partiality might reasonably be questioned.

28 U.S.C.A. § 455(a) (emphasis added).

Do any of retaliation, Record-tampering or witness-tampering raise the partiality issue?

The result is self-announcing, here. SCHLESINGER and the Clerk overtly tampered with the Record in retaliation against Arnold for his pointing out the illegality of the threshold arrest. Thus, SCHLESINGER exceedingly crosses the line into questionable partiality.

Liljeberg—because SCHLESINGER didn't self-recuse

All three of the *Liljeberg* factors are satisfied, and any one of them may compel vacating or reversing:

- "the risk of injustice to the parties in the particular case[;]"
- "the risk that the denial of relief will produce injustice in other cases[;] and"
- "the risk of undermining the public's confidence in the judicial process."

Liljeberg, 486 U.S. at 864.

Arnold definitely was railroaded. To allow this here is to ***insure*** it will happen again in other cases. And, it's impossible to conclude that the "public confidence" is anything but horrifically undermined where the "judge" retaliates against, and victimizes all the more, those who point out the errors that the "judge" has committed.

Conclusion—SCHLESINGER should have recused.

Arnold made manifest the illegality of the threshold arrest, and SCHLESINGER criminally retaliated. If this can't trigger § 455(a), then nothing can.

Statutory Challenge

4. Does the supervised release system violate Separation of Powers?

Only legislatures may define crimes.

Lanier, 520 U.S. at 265-66 and nn.5, 6. *Bass* distinguishes court-defined crimes from legislature-defined crimes. *Bass*, 404 U.S. at 347-48 (rule of lenity—(1) common language (2) legislatively enacted). "In our system, so far at least as concerns the federal powers, defining crimes and fixing penalties are legislative, not judicial, functions." *Evans*, 333 U.S. at 486 and n.4.

Judicial fiat does not define crime.

In § 3583(e)(3), the legislature purport to delegate to the judiciary the authority to define otherwise non-criminal, non-contempt (non-) conduct as criminal by way of judicial fiat, and then to justify incarceration for non-compliance. There are only three reasons to incarcerate: (1) criminal conduct; (2) civil contempt; or (3) criminal contempt. Not one of these applies here.

FED. R. CRIM. P. 32.1 manifestly associates "probable cause" with ***non***-criminal conduct, obliterating the distinction between criminal and non-criminal conduct. ***No*** nation can survive the blurring of ***these*** lines.

Invalidating practices—Where's the evidence?

If the statues are valid, the enforcement practices still render the system invalid. This sounds in Due Process and Equal Protection, but the end result is the same.

Regardless of whose motion to revoke this is, there is ***no evidence*** supporting it. *Ex parte* arrest for alleged breach was "ordered," was "justified," despite the complete absence of even one shred of evidence. *See also* Question 5. This is unconscionable and intolerable.

Further, the condition precedent of an enforceable order establishing supervised release is not satisfied for at least two reasons: the facial, outright illegality of the

"judgment," coupled with the validity of the BOP release documents. How does the *presumption* of validity survive ***facial*** illegality? Arnold faced nothing but illegal "orders" and, at best, ambiguity, if not administrative confirmation outright of the illegality of the "judgment." Thus, the unconscionability and egregiousness of the ***no-evidence, no Notice*** arrest go off the top of the chart (*rumored* non-criminal, non-contempt, (non-)conduct of mere breach of terms that did not (yet) lawfully exist or apply, and an arrest "order" that is, itself, ***facially illegal and void*** (no such case *or* judge in that District)).

In sum, not only was there ***no evidence*** of breach offered in support of the motion, but also ***no evidence*** of the necessary condition precedent, namely the existence of any unambiguous requirement that Arnold participate in any supervised release program. The "SCHLESINGER v. BOP" ambiguity is not caused by Arnold, nor does arresting Arnold cure it. It's legally impossible to breach a term or condition that doesn't exist. And, if what "justifies" the criminal conduct under color that has victimized Arnold is this supervision system, then the system has got to go.

Conclusion.

Even if evidence existed, *arrest* for mere "breach" (non-criminal, non-contempt (non-)conduct) is shear madness. The delegation of such crime-defining authority violates Separation of Powers. If the appellate panel are right, i.e., if there is no Separation of Powers problem, then the focus shifts to the invalidating practices. Where there is no evidence, even of breach, and where there is no meaningful Notice or Opportunity to be heard to challenge the allegations of mere breach, BEFORE loss of liberty, via this ***civil*** revocation proceeding, then there still exists a fatal flaw in the statutory plan, itself.

Due Process--*Ex parte* arrest without evidence

5. May a person be ordered arrested not only without evidence, but also, in a civil proceeding alleging mere breach, without Notice or Opportunity to be heard?

Arrested via *ex parte* "order" without evidence.

This is just one more problem that would likely be avoided in all cases if we ditched the intellectually dishonest, credibility straining fiction of *sua sponte* revocation motions and implemented Hon. G. Thomas Eisele's very self-consistent policy of reality. Surely, *ex parte* proceedings still require ***evidence!*** So, how *does* a trial judge submit a verified motion without instantly becoming a witness, thereby raising the conflict issue? And, where we're talking about case-*initiation*, e.g., "motions" for search warrants filed by agents, not AUSA's, how *does* the judge justify being both a party and the judge, simultaneously? (This isn't France.) Obviously, in a criminal contempt matter, the judge is both witness and judge, but, then, in criminal contempt proceedings, there's a LOT more procedure at the threshold, all based on the preeminent fact of alleged *criminal* conduct.

If the probation officer is going to supply ***evidence***, then let her supply ***evidence***, not reports, not rumors, not motions/pleadings. And, where the probation officer is going to supply ***evidence***, who better than the AUSA to review and analyze that ***evidence*** BEFORE acting on it, say, e.g., per FED. R. CIV. P. 11?

How ironic is it that *revocation* requires at least a preponderance of ***evidence***, but the *arrest* requires none?! And, how *do* "judges" avoid kidnapping charges where they haul off and order people arrested, for non-criminal, non-contempt, (non-)conduct, based on ***no evidence?*** Is the criminality diminished where the "order" is by a "judge" not known to that District, in a non-existent case?

Arrested for alleged breach without Notice.

The fact that revocation is a ***civil*** proceeding compels the *civil* Due Process analysis. *Property* interests cannot be deprived without meaningful Notice and a meaningful Opportunity to be heard. *Mullane*, 339 U.S. at 313. So, on what basis do we vaporize the whole Due Process theory when dealing with *liberty* interests, in the *civil* context?!

Ex parte "orders" without evidence are bad enough, but even *with* evidence, why is this *ex parte* at all? There is no criminal conduct anywhere in sight. Arnold was arrested for two reasons: no reports, and not attending a meeting the probation officer had no authority to compel him to attend in the first place. That lack of authority is already addressed here, namely, the "judgment" is illegal on its face, and if it *were* valid, BOP's release, which must be given just as much presumed validity, created an ambiguity. In a law-abiding world, ambiguous orders are unenforceable. *Cf. Longshoremen*, 389 U.S. at 76. Where BOP is "confused," and where BOP deals with the issue all day, every day, how can the individual defendant possibly be attributed with clarity of understanding?

What *should* have happened.

Had a competent Due Process analysis applied, not only would Arnold have received Notice of the post-judgment proceeding pleading (signed by an AUSA), but also he would have had the Opportunity to be heard on these points, BEFORE any loss of liberty occurred. Let the trial "judgment" be lawful, *first*; let Plaintiff fix the BOP ambiguity, *first*; let BOP update (and serve) its release, *first*, and THEN evaluate the matter for an alleged "breach." Arresting Arnold solved ***nothing!*** SCHLESINGER/USA/GRIZZARD needed *first* to fix BOP, i.e., the ambiguity. Arnold ***was not*** the problem here!

Conclusion—*ex parte* was unconscionable.

The decision to arrest should ***never*** have been an *ex parte* decision. It's a mere allegation of breach, for crying out loud! More over, ***there is no evidence!***

Conclusion

No such "judge;" no such case; no evidence; no Notice.

With or without evidence, SCHLESINGER was just dead flat wrong to enter any "order" animating MIDDLE DISTRICT OF ***GEORGIA***, especially where there is no such case as the one in which SCHLESINGER issued the arrest "order." [1386]. The clerk in ***FLORIDA*** should never have filed it in the FLORIDA case. The magistrate in GEORGIA should never have acted on it.

Breach or no breach, UPL or no UPL, the fact that the arrest "order" was granted *ex parte* on ***no evidence*** should have been its own clue. And, for mere breach, the fact that revocation is ***civil*** compels Notice and Opportunity to be heard BEFORE loss of liberty.

Followed up by criminal retaliation under color.

The revocation matter should have ended with Arnold's Motion to Strike. But, consistent with the present mindset of some, which is to retaliate criminally against informed *pro se*'s and to ***create*** problems, rather than to prevent/cure/resolve them, SCHLESINGER bulldozed forth, tampering with both the Record and the witness, which conduct the appellate court fully approved.

Animating the Wrong District—Important Question of Federal Law.

Whether a federal trial judge may animate a District to which he is not assigned (and then issue "orders" in a case that doesn't even exist in that District) is an important question of federal law that has not been, but should be, decided by this Court.

Recusal—Direct Conflict with Federal Standards.

The 11th Circuit's corrupted standard of right and wrong ***defies*** the law of this state, the rulings of this Court and the competent rulings of other circuits. Thus, the court of appeals have (1) entered an opinion that

conflicts with relevant decisions of this Court and with relevant decisions of other courts of appeals, and (2) so far departed from the accepted and usual course of judicial proceedings, and have sanctioned, tolerated, encouraged and even celebrated the same departure by the lower court, systemically, as to call for the exercise of this Court's supervisory power.

Statutory Challenge—Important Question of Federal Law.

Whether the supervised release program constitutes and improper delegation of crime-defining authority is an important question of federal law that has not been, but should be, decided by this Court.

If there is no Separation of Powers conflict, then whether the supervised release program, as presently implemented and operated, e.g., allowing no-evidence *ex parte* arrest-warrants, violates Due Process and Equal Protection is an important question of federal law that has not been, but should be, decided by this Court.

Due Process—Direct Conflict with Federal Standards.

The 11th Circuit's corrupted standard of right and wrong ***defies*** the law of this state, the rulings of this Court and the competent rulings of other circuits. *Ex parte* proceedings do not produce orders without evidence. *Civil* proceedings require both Notice and the Opportunity to be heard BEFORE deprivation of the property *or liberty* interest. Thus, the court of appeals have (1) entered an opinion that conflicts with relevant decisions of this Court and with relevant decisions of other courts of appeals, and (2) so far departed from the accepted and usual course of judicial proceedings, and have sanctioned, tolerated, encouraged and even celebrated the same departure by the lower court, systemically, as to call for the exercise of this Court's supervisory power.

Remedies Requested

Arnold requests

1. That this Court grant this petition, issue the writ of certiorari and take jurisdiction of this matter;
2. That this Court reverse the judgment, or vacate and remand, or reverse and remand to the *trial* court with instructions regarding (1) recusal, (2) the granting of Arnold's Motion to Strike, and (3) the establishment of a Board of Inquiry to investigate into the matters raised in this case;
3. As much discussion on the issues presented and necessarily included as this case may allow;
4. The opportunity to brief any additional issues the Court may identify;
5. The non-argument calendar. Oral argument is not expected to aid in the resolution of these issues;
6. That costs be taxed to the 11th Circuit and the trial court, jointly and severally; and
7. Any and all other relief at law, in equity or sui generis to which he may show himself justly entitled.

Respectfully submitted,

William Allen Arnold
Without prejudice
c/o 1342 Forrest Road
Columbus, Georgia [31907]

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Rule 14.1(i)(i)—Appellate Opinion on Remand

2005 Nov 28

[DO NOT PUBLISH]

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
November 28, 2005
THOMAS K. KAHN
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 04-16353
Non-Argument Calendar

D. C. Docket No. 00-00262-CR-J-20HTS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIAM ALLEN ARNOLD,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(November 28, 2005)

Before TJOFLAT, CARNES and BARKETT, Circuit Judges.

PER CURIAM:

William Allen Arnold, pro se, appeals the district court's revocation of his [12] supervised release. Arnold

challenges his underlying conviction and sentence, and contends that the probation officer who submitted a petition notifying the court that he violated conditions of his supervised release engaged in the unauthorized practice of law, that the sentencing judge erred in failing to recuse himself, and that the district court violated the Separation of Powers doctrine by sentencing him to a term of imprisonment based on his violation of a condition of supervised release.

We find no error. We will not consider Arnold's arguments challenging his underlying conviction because this Court affirmed Arnold's conviction on direct appeal, and this is not a 28 U.S.C. § 2255 proceeding. We likewise do not consider Arnold's arguments challenging his underlying sentence, because the sentence is presumed valid and cannot be challenged in a revocation proceeding. By reporting to the court the status of Arnold's supervised release, the probation officer is not engaging in the unauthorized practice of law. We find no error in the procedures utilized by the district court below and find no abuse of discretion in the revocation of Arnold's supervised release, or in the district court judge's refusal to recuse himself from the sentencing proceeding, as there is no evidence of any personal bias or prejudice by the district court judge against Arnold. Finally, the revocation of supervised release process does not violate the Separation of Powers doctrine.

AFFIRMED.

Rule 14.1(i)(ii)—Additional Orders

Order Denying Motion for Release Pending Appeal

TJOFLAT denied the motion, without opinion.

Rule 14.1(i)(iii)—No Rehearing

No rehearing sought or granted.

Rule 14.1(i)(iv)—No Judgment of different date

No judgment of date different from the opinion.

Rule 14.1(i)(v)—Statutes and Rules

See language included in the petition.

Rule 14.1(i)(vi)—Additional Essential Materials

Revocation Hearing Transcript (pp.1, 44)

(Emphasis is supplied.)

1 UNITED STATES DISTRICT COURT MIDDLE
DISTRICT OF FLORIDA
2 JACKSONVILLE DIVISION

3 UNITED STATES OF AMERICA —:
CASE NO. 3:00-cr-262-J-20HTS
4 -vs- :
:
5 WILLIAM ALLEN ARNOLD. : Courtroom 10C

: November 30, 2004

Defendant. : 2:30 p.m.

. . . . . .

TRANSCRIPT OF REVOCATION OF SUPERVISED RELEASE PROCEEDINGS

before

THE HONORABLE HARVEY E. SCHLESINGER
United States District Judge

APPEARANCES:

For the Government: N. SCOTLAND MORRIS, Esquire
RALPH LEE, Esquire
Assistant United States Attorney
300 North Hogan Street
Seventh Floor
Jacksonville, Florida 32202

For the Defendant: Pro Se

Also Present: Jan Berglund, U.S. Probation Officer

Court Reporter: EVELYN G. ALDERMAN, RPR
Post Office Box 244
Jacksonville, Florida 32201

(Proceedings reported by stenography; transcript prepared by computer.)

EVELYN G. ALDERMAN, RPR COPY

wrong rule.
THE DEFENDANT: Well, for a criminal complaint, it would be 3 and 4.
THE COURT: You're citing the wrong rule.
THE DEFENDANT: And I think it would be 11 and 7 for filing of pleadings or motions, and if this is a motion for modification, she can't file it. I don't think she can file it to start with. That's why I brought UPL (phonetic) charges.
THE COURT: Your Motion to Strike is denied.
THE DEFENDANT: Bear with me a minute.
THE COURT: I'm bearing with you. I think everybody else is too.
BY MR. ARNOLD:
Q. How long have you known Mr. Arnold?
A. I have known you -- you know we had a prior association under Pretrial Services -- I can't remember exactly how many years I've known you.
Q. Quite a while though?
A. I wouldn't say quite a while. I'd say more than one year, less than five.
Q. Okay. I don't know how long you've been in Columbus. I don't think you've been there but about four or five years. But I was on supervised release for the whole

Certified Mail Numbers

The following selected Certified Mail numbers confirm service and filing of Arnold's Motion to Strike:

7004 0550 0000 9197 1833
HARVEY E. SCHLESINGER
C/o CLERK OF COURT
MIDDLE DISTRICT OF FLORIDA
300 HOGAN ST.
JACKSONVILLE, FLORIDA 32202

8 November 2005, T.J. Howie

7004 0550 0000 9197 2175
M. SCOTLAND MORRIS-AUSA-Jacksonville

7004 0550 0000 9197 2090
PAUL I. PEREZ- US Atty-Tampa